

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

AERSALE, INC.,

Plaintiff,

v.

Civ. Case No. 2:22-218 MIS/KRS

THE CITY OF ROSWELL, NEW MEXICO,
a New Mexico Municipal Corporation,

Defendant.

**ORDER HOLDING PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION IN ABEYANCE**

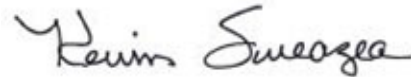
THIS MATTER is before the Court on the presiding judge's Order of Reference, (Doc. 27), referring Defendant's Motion to Dismiss, (Doc. 16), to the undersigned for proposed findings and a recommended disposition. On January 26, 2023, Plaintiff filed an opposed Motion to Amend, (Doc. 29), seeking to amend and supplement its first amended complaint by filing a second amended complaint. In its proposed second amended complaint, Plaintiff seeks to: add two defendants; add allegations about these proposed defendants; add claims under 42 U.S.C. §§ 1983 and 1985; add allegations regarding notice provided to Defendant City of Roswell relevant to Plaintiff's New Mexico Tort Claims Act claims; remove Plaintiff's claim for tortious interference with contract; add an allegation about Plaintiff's complaint filed with the Federal Aviation Administration; and "refine further its remaining counts by expanding its negligence count and modifying the count for declaratory judgment." (Doc. 29) at 2-3.

If the Motion to Amend is granted, the pending Motion to Dismiss becomes moot. *See Mink v. Suthers*, 482 F.3d 1244, 1254 (10th Cir. 2007) ("[A]n amended complaint supersedes an original complaint and renders the original complaint without legal effect.") (citation omitted); *Henry Coffeen III Management, Inc. v. Branch*, 2017 WL 4271423, at *3 (D.N.M.) ("A pleading

that has been amended under Federal Rule of Civil Procedure 15(a), supersedes the pleading it modifies,” and “motions to dismiss [filed before an amended pleading] are technically moot because they are directed at a pleading that I s no longer operative.”) (citation omitted).

Accordingly, the Court will hold in abeyance its proposed findings and recommended disposition on the Motion to Dismiss, (Doc. 16), pending a ruling on the Motion to Amend, (Doc. 29).

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Kevin Sweazea". The signature is written in a cursive, flowing style. The first name "Kevin" is written in a smaller, more compact script, while the last name "Sweazea" is written in a larger, more expansive script with a long, sweeping tail on the final letter.

KEVIN R. SWEAZE
UNITED STATES MAGISTRATE JUDGE